

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5808 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VASANT CINEMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5808 of 2004
MR AJAY R MEHTA for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 03/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives service
of Rule for the respondents.

2. This petition challenges the order dated 31.3.2004 passed by the Entertainment Tax Commissioner rejecting the petitioner's revision application on the ground that it was barred by delay of 53 days.

3. Having heard Mr Ajay Mehta, learned counsel for the petitioner and Mr Siraj Gori, learned AGP for the respondents and having regard to the decisions of the Apex Court in Collector Land Acquisition, Anantnag & Ors. vs. Mst. Katiji & Ors., AIR 1987 SC 1353 and Vedabai Alias Vaijayantabai Baburao Patel vs. Shantaram Baburao Patel & Ors., 2001 (9) SCC 106, laying down that the applications for condonation of delay should be considered liberally unless the party has abandoned his right or shown gross negligence and considering the facts of the present case wherein the petitioner had contended that the petitioner was not well and was under medical treatment and considering the fact that Chetan C Maysuria is the power of attorney holder of proprietor Iqbal I Bhadri and that the medical certificate was for Chetan Maysuria, we are of the view that, in the facts and circumstances of the case, the delay of 53 days in filing the revision application deserved to be condoned, more particularly when any tax liability which would finally be determined would be payable by the petitioner with interest in accordance with the provisions of the Entertainment Tax Act.

4. We accordingly allow this petition, set aside the order dated 31.3.2004 and direct the Commissioner of Entertainment Tax to entertain the petitioner's revision application on merits subject to the following conditions:-

- (i) The petitioner shall deposit, without prejudice to its rights and contentions, 25% of the amount of Rs.6,41,712/- which is the amount mentioned in the order dated 17.9.2003 of the Entertainment Tax Commissioner, Navsari. The said 25% amount shall be deposited in four equal monthly instalments. The first such instalment shall be deposited by 20.9.2004.
- (ii) The arrears of current tax shall also be paid by the petitioner in four equal monthly instalments. The first such instalment shall be payable by 20.9.2004.
- (iii) After the aforesaid conditions are complied with, the Entertainment Tax Commissioner shall hear and

decide the petitioner's revision application on merits and in accordance with law.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-